

GEORGIA DEPARTMENT OF NATURAL RESOURCES

Georgia Conservation Tax Credit Program

Certification Process and Procedures

This document provides a description of the objectives of the Conservation Tax Credit Program, requirements for participation, and procedures relating to the Department's certification Process.

Background

In 2006 the Georgia legislature passed House Bill 1107, which amended existing Georgia laws relating to the imposition, rate, and computation of state income tax. The stated purpose of the Act was to "provide for income tax credits with respect to qualified donations of real property for conservation purposes."

Qualified donations include fee simple donations of property to the Federal Government, State, county, municipality, or consolidated government, or bona fide charitable nonprofit organization, as well as donation of a conservation easement on real property to any of these organizations. Discounted sales of property or conservation easements below Fair Market Value are also considered qualified donations. Conservation Purposes are defined by the Department and include:

- Protection of water quality through the conservation of land containing a substantial amount of 100-year floodplain or containing streams, rivers, springs, marshlands, or natural wetlands, and which have a Permanently Protected vegetated buffer, such buffer being no less than 100 feet wide as measured from the edge of the water body or wetland and wherein no land-disturbing activities, timber harvest, or agricultural operations will occur;
- Reduction of erosion through the conservation of land containing a substantial amount of steep slopes of greater than 25% that will be protected from soil-disturbing activities;
- Protection of wildlife habitat through the conservation of high priority plants, animals, and habitats as defined by Georgia's Comprehensive Wildlife Conservation Strategy dated August 31, 2005, a copy of which can be obtained on the web at www.gadnr.org/cwcs or from the Wildlife Resources Division of the Department of Natural Resources 2070 U.S. Hwy. 278, SE, Social Circle, GA 30025 (Tel: 770-918-6400);
- Maintenance of prime farmland and forestry land managed according to current Best Management Practices as defined by the Georgia Soil and Water Conservation Commission and/or the Georgia Forestry Commission. Such properties must consist of a minimum of ten (10) contiguous acres and be used for production of timber products, crops, or livestock;
- Provision of compatible, low-infrastructure natural-resource based outdoor recreation as described in Georgia's Statewide Comprehensive Outdoor Recreation Plan 2008-2013, a copy of which can be obtained on the web at

www.gastateparks.org or from the Georgia State Parks & Historic Sites Division of the Department of Natural Resources at 2 Martin Luther King, Jr. Dr., Suite 1352 East, Atlanta, GA 30334 (Tel: 404-656-2770), through the protection of land which is accessible for substantial and regular use by the general public at little or no cost;

- Provision of habitat or recreational connectivity through the protection of land contiguous with existing Conservation Lands, or with local, state, or federal lands managed primarily for natural habitat and which are open to the general public; and
- Protection of land with significant archaeological and/or historic sites, listed in or eligible for the Georgia Register of Historic Places either individually, or as a contributing building or land area within a historic district.

In general terms, the purpose of the GCTCP is to provide a financial incentive to landowners to encourage dedication of their property for conservation uses. The incentive is provided in the form of a state income tax credit that can be applied in the tax year of the donation; any unused tax credit can then be carried forward and applied to the landowner's tax liability for up to ten additional years. The overall goal is to provide permanent protection for a variety of important conservation areas throughout Georgia through voluntary donations of property.

Eligibility

Individual and corporate owners of real property in Georgia are eligible to participate in the GCTCP. In order to be eligible to receive the state income tax credit, the following terms must be met:

- 1) The landowner must donate or bargain sell the property in fee simple or donate or bargain sell a permanent conservation easement on the property;
- 2) The donation must be accepted by the Federal Government, State, county, municipal, consolidated government, or a bona fide charitable nonprofit organization;
- 3) The property in question must meet one or more Conservation Purposes as defined by the Department; and
- 4) Properties donated in fee must be permanently protected either by placing a conservation easement or restrictive covenant on the property. The restrictive covenant must be permanent and meet the requirements of subsection (c) of Code Section 44-5-60.

Some types of land are specifically exempted from eligibility under the Act. One type includes properties that are required to be dedicated for conservation use pursuant to local government regulations or ordinances (e.g., zoning regulations), or in order to increase building density levels (e.g., cluster developments or conservation subdivisions with dedicated greenspace). The other type of ineligible land includes property used for or planned for use as a golf course. In addition, lands developed for or intended for other intensively managed recreational uses, such as baseball or soccer fields, are not eligible. Lastly, only one qualified donation may be made on a property that was part of a larger

parcel under the same ownership in the prior year, except as otherwise provided in O.C.G.A. § 48-7-29.12 (d)(2),

Role of the Department of Natural Resources

The Department is responsible for determining whether or not a donated property is suitable for Conservation Purposes and providing certification of suitability to the landowner. The Department has the authority to promulgate rules and regulations necessary to carry out this mandated responsibility.

Once eligibility has been met, the Department considers a variety of other factors to determine whether a donation is suitable for certification under the GCTCP. These include the characteristics of the property, surrounding land uses, the type of donation, the terms of the deed, conservation easement, or other instrument of transfer, the qualifications and stewardship capacity of the recipient, and other factors relating to the long-term viability and protection of the property. The Department does not take into account or evaluate any financial aspects of the conservation donation.

Application Requirements

For a conservation donation to be considered for certification under this program, the applicant must provide the following to the Department:

- a. A completed application form signed by the landowner and grantee
- b. A USGS quad/topographic map, county tax map, survey plat, aerial photo, or other map depicting boundaries of the subject property and identifying the location of natural, historic, or archaeological resources of significance
- c. For conservation easements, a Baseline Documentation Report showing the condition of the property at the time of donation
- d. General information about the Conservation Purpose(s) met by the project
- e. For pre-certification applications, an explanation of how the property will be permanently protected
- f. For final certification applications, a copy of the executed instrument of transfer and evidence of clear title
- g.

Application forms are available online at www.glcp.ga.gov/taxcredit or from the Department at the following address:

Georgia Conservation Tax Credit Program
 Georgia Department of Natural Resources
 Wildlife Resources Division
 2065 U.S. Highway 278, SE
 Social Circle, GA 30025
 (770) 918-6411

Submission of Applications

Applications may be submitted by mail or in person, but must include all necessary attachments. The Department will not accept incomplete applications for consideration. If an incomplete application is received, the applicant will be notified of this fact and given an opportunity to submit the additional required materials.

Review of Applications

Completed applications are reviewed by Department staff. Evaluation of the application includes review of all submitted materials as well as any other relevant information that is available to the Department. If a site visit is required, the landowner and/or land manager will be contacted to secure permission for accessing the site. In making application for certification under this program, the landowner acknowledges the need to provide reasonable access to the property for a site visit by Department staff.

Pre-Certification

Since certification required for the tax credit can only be made after the conservation donation has been completed, pre-certification is an optional intermediate step that may be of interest to landowners contemplating a conservation donation under this program. Pre-certification provides the landowner with an estimate of the likelihood that a completed donation will meet the Conservation Purposes of this program and therefore be eligible for certification. It does not include an assessment of the resulting tax credit or suitability of the donation for any other conservation program. Applications for pre-certification can be made prior to donation, and determinations of likely eligibility for certification are based on assumptions that all other requirements of the program will be met.

Within 60 days of receipt of the application package the Department will notify the applicant by letter as to the finding of eligibility for certification under this program and any conditions that must be met. Pre-certification applications that have been rejected because of incomplete or incorrect information may be revised and resubmitted for consideration by the Department. If the application does not meet the conservation purposes requirement, it may not be resubmitted. All resubmissions will be reviewed within 60 days of receipt. Pre-certification is not binding on the landowner or the Department.

Certification

Application for certification can only be made after the conservation donation has been completed and the property transaction is recorded by deed or other legal instrument. The Department will review all applications for certification and make a determination of whether or not the donation meets the Conservation Purposes defined for this program. The Department will provide written notification from the Director of the Wildlife Resources Division of this finding to the landowner within 90 days of receipt of the application.

Owners of properties that have been approved for certification under this program will receive an official certification letter that must be submitted with their tax return if claiming the state income tax credit. If the application for certification has been rejected, the response letter from the Department will indicate which requirements were not met. Certification applications that have been rejected based on erroneous or insufficient information may be revised and resubmitted for consideration by the Department; all such resubmissions will be reviewed within 90 days of receipt.

Appeal of Certification Determinations

A final determination by the Department on a Certification application shall be subject to review and appeal under Chapter 13 of Title 50, the Georgia Administrative Procedure Act. To contest the Department's final determination, an applicant must file a petition for a hearing within thirty (30) calendar days after issuance of notice of the Department's final determination. A petition for hearing must be in writing and must comply with all applicable requirements set forth in Rules 391-1-2-.03, 391-1-2-.04 and 391-1-2-.05. The date upon which a petition for hearing is deemed to be filed with the Department is determined in accordance with Rule 391-1-2-.04. The failure of an applicant to file a petition for hearing within thirty (30) calendar days after issuance of notice of the Department's final determination shall operate as a waiver of the applicant's right to contest the determination and the determination shall become the final decision of the Department in accordance with O.C.G.A. § 50-13-19.

Qualified Organizations

Organizations that are qualified to accept donations of conservation land under this program are defined as follows:

“Qualified Organization” means the Federal Government, State, county, municipality, or consolidated government of this state; or a bona fide charitable nonprofit organization qualified under the Internal Revenue Code. To be a Qualified Organization, a charitable nonprofit must:

- (a) Be authorized to do business in Georgia and, if required, be currently registered with the Georgia Secretary of State;
- (b) Have received tax-exempt status as a charity under section 501(c)(3) of the Internal Revenue Code of 1986 as stated in a Determination Letter provided by the Internal Revenue Service;
- (c) Meet the requirements of section 1.170A-14(c) of the Internal Revenue Code of 1986, and therefore have the power to acquire, hold, or maintain land or interests in land; and
- (d) Have adopted the Land Trust Alliance’s *Land Trust Standards and Practices* (2004), a copy of which can be obtained from www.lta.org, as guidelines for the organization’s operations.

Documentation of these qualifications must be provided to the Department in a Qualified Organization Certification Application each year. In addition, Qualified Organizations

must provide the Department with copies of monitoring reports, as requested, in order to remain a Qualified Organization under this program. A list of currently qualified organizations can be found on the web at www.glcp.ga.gov/taxcredit.

Permanent Protection

To be eligible for this program, conservation lands must be permanently protected. “Permanent Protection” means permanently protected land and water resources as defined in O.C.G.A. § 12-6A-2 (10).

“Permanent Protection” means those resources:

- (a) Owned by the State of Georgia, and dedicated or intended to be dedicated as a Heritage Preserve;
- (b) Owned by a Georgia taxpayer, and subject to a conservation easement held by a Qualified Organization that ensures that the land will be maintained as Conservation Land; or
- (c) Owned by a Qualified Organization, and subject to:
 1. A conservation easement that ensures that the land will be maintained as conservation land;
 2. Contractual arrangements that ensure that, if the protected status is discontinued on a parcel, such property will be replaced by other conservation land which at the time of such replacement is of equal or greater monetary and resource protection value; or
 3. A permanent restrictive covenant as provided in subsection (c) of Code Section 44-5-60.

Criteria Considered by the Department in Determining Suitability for Certification

In determining the suitability of a donation for certification under this program, the Department takes several factors into consideration. These include the following:

- Type, size, and condition of property
- Presence of significant natural or cultural resources
- Location of property relative to other conservation lands
- Current and future management and use
- Terms of the easement, deed, or other legal instrument
- Qualifications and stewardship capacity of the fee or conservation easement holder
- Any other factors affecting long-term protection or viability of the property

Each conservation donation proposed for certification under the GCTCP is evaluated in the context of the property’s unique geographic setting and site characteristics. For this reason, the Department does not have standards relating to the size of a tract or other factors. Instead, the Department evaluates the overall contribution of the proposed donation to eligible Conservation Purposes as well as the probability that these Conservation Purposes can be supported in perpetuity.

Exhibit A - Requirements for Conservation Easements and Restrictive Covenants

The following are required components of conservation easements accepted under the Georgia Conservation Tax Credit Program (GCTCP).

For All Conservation Easements:

- A baseline documentation report that provides a detailed description of the condition of the land at the time the conservation easement is placed on the property, as well as a forest or agricultural management plan if the property warrants such a plan.
- A provision stating that no amendments shall be made to the conservation easement without the approval of the Department. The Department shall have 90 days to comment on any requested amendment; and
- A provision in the conservation easement that identifies the donation's Conservation Purposes;
- A provision in the conservation easement that states that the conservation restrictions run with the land in perpetuity and that any reserved use shall be consistent with the Conservation Purposes;
- A provision in the conservation easement that prohibits the Grantee from subsequently transferring the interest in land unless the transfer is to another public or private conservation agency that will maintain the Conservation Purposes for which the donation was originally intended;
- A provision in the conservation easement that provides that the donation of the less-than-fee interest is a property right, immediately vested in the public or private conservation agency receiving the donation, and provides that the less-than-fee interest has a fair market value that is at least equal to the proportionate value that the conservation restriction at the time of the donation bears to the property as a whole at that time; the provision shall further provide that if subsequent unexpected changes in the conditions surrounding the property make impossible or impractical the property's continued use for Conservation Purposes and judicial proceedings extinguish the easement or restrictions then the Grantee is entitled to a portion of the proceeds from the property's subsequent sale, exchange, or involuntary conversion at least equal to the perpetual conservation restriction's proportionate value.
- All provisions or restrictions pertaining to mineral rights must be consistent with the provisions of IRC Section 1.170A-14.

Conservation Easements for Historic Resources:

- If the Conservation Purpose is for the preservation of a archaeological site, historic resource, or historically important land area, include documentation, in the form of the nomination or determination of eligibility for the Georgia Register of Historic Places. These resources may include an independently significant land area that meets the Georgia Register criteria for evaluation in Georgia Code 391-5-10, a land area within a registered historic district that can reasonably be considered as contributing to the district's significance, and a land area adjacent to a property listed individually in the Georgia Register of Historic Places where the land area's physical or environmental features contribute to the property's historic or cultural integrity.
- For Historic buildings, easements must protect the entire facade of the building and the associated land from alteration.

For Fee Simple Donations with Restrictive Covenants:

Eligible conservation land includes property owned by a Qualified Organization and protected in perpetuity through a permanent restrictive covenant as provided in subsection (c) of Georgia Code Section 44-5-60. Note: under Georgia Code, the land must be open to public use to qualify as permanently protected. For a restrictive covenant to meet GCTCP objectives, at a minimum the deed or restrictive covenant document must include the following:

- A description of the Conservation Purpose(s) of the property that qualified it for this program;
- A statement that the property is permanently protected as conservation land; and,
- A statement that the land shall be used and managed only for purposes compatible with the conservation purposes